

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT EDWARD McCUE,

Plaintiff,

Case No. 1:12-cv-1139

v.

HON. ROBERT HOLMES BELL

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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**MEMORANDUM OPINION AND ORDER APPROVING AND ADOPTING
MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

This is a social security review action filed pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that this Court affirm the final decision of the Commissioner of Social Security. The matter is presently before the Court on Plaintiff’s objections to the R&R. In accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(3), the Court has performed de novo consideration of those portions of the R&R to which objections have been made. The Court overrules the objections and issues this Memorandum Opinion and Order.

“[A] general objection to a magistrate’s report, which fails to specify the issues of contention, does not satisfy the requirement that an objection be filed. The objections must be clear enough to enable the district court to discern those issues that are dispositive and contentious.” *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). The Court may accept, reject, or modify any or all of the Magistrate Judge’s findings or recommendations. *Id.* “[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.” *United States v. Johnson*, 440 F.3d 832, 846 (6th Cir. 2006).

Plaintiff contends that the Magistrate Judge failed “to note the differential diagnosis rendered by the Consulting psychologist,” (Pl.’s Obj., Dkt. No. 21 at 2), specifically that “if [Plaintiff’s] condition is not in fact the product of a verifiable medical condition, that it would likely mean that there were in fact psychological, involuntary factors that would severely interfere with abilities to perform work related activities in a reliable persistent and consistent manner [sic].” (*Id.* at 3.) Plaintiff also argues that the Magistrate Judge failed “to consider subsequent findings” about his condition, namely that he actually suffered from a “physically determinable medical condition.” (*Id.* at 3–7.) Plaintiff argues that a subsequent diagnosis of “non-ulcerative colitis . . . establishes the legitimacy of the medical diagnosis.” (*Id.* at 6.) Plaintiff’s objections lack merit.

Whether or not Plaintiff was somatizing his pain, or his pain was caused by a psychological disorder, or his pain had a physical cause is of no import. As the Magistrate Judge concluded, the Administrative Law Judge (“ALJ”), based on substantial evidence, determined that Plaintiff retained the capacity to perform light work and that a significant number of jobs exist in the national economy that Plaintiff could perform. (R&R, Dkt. No. 20 at 10.) Plaintiff’s arguments appear to be contesting a finding by either the Magistrate Judge or the ALJ that Plaintiff did not suffer from a real impairment. (*See* Pl.’s Obj., Dkt. No. 21 at 6.) However, as the Magistrate Judge noted, the ALJ “determined that Plaintiff suffered from a severe impairment.” (R&R, Dkt. No. 20 at 15.)

Plaintiff has pointed out no error on the part of the Magistrate Judge or the ALJ in determining that he still has the capacity to do work for which a significant number of jobs exists in the national economy. Having conducted de novo review, this Court is convinced that both the Magistrate Judge and the ALJ correctly applied the appropriate legal standards, and that the final decision of the Commissioner should be affirmed.

For the foregoing reasons, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. A Judgment will be entered consistent with this Opinion and Order. *See* Fed. R. Civ. P. 58.

IT IS HEREBY ORDERED that the Plaintiff's Objections (Dkt. No. 21) are **OVERRULED**.

IT IS FURTHER ORDERED that the Magistrate Judge's January 24, 2014, R&R (Dkt. No. 20) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that the final decision of the Commissioner of Social Security is **AFFIRMED**.

Dated: February 19, 2014

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE